

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,457

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a forty-five-year-old woman with three years of college education. She has worked primarily as a secretary and an administrative assistant in office settings.

The petitioner is an insulin dependent diabetic and has a history of asthma and hypercholesterolemia. Her most severe medical problems, however, are recurrent severe depression and a history of alcohol and drug abuse. She last worked in September, 1994, when a recurrence of her depression forced her to leave work. In November, 1994, she was hospitalized for twenty days suffering from a major depressive episode.

The recent medical evidence includes a medical report from a clinical therapist who has followed the petitioner since her hospitalization. This report, dated February 24, 1995, includes the following history and comments:

Patient was hospitalized for 3 weeks for Major Depression and suicidality. She was discharged 11/29/94 and treated by UCS outpatient since that time. Patient has not been improving, reporting continued feelings of depression and suicide ideation which was accompanied by a plan. Medication was adjusted by UCS psychiatrist toward previous levels. Patient has a history of recurrent Major Depression with psychiatric hospitalization. She has a history also of alcohol abuse and dependence as well as substance abuse and dependence (benzodiazepines) but she has been sober X9 years.

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Following a brief initial period after hospitalization when patient seemed to be improving, she has worsened. While she has in the past had period of stability between hospitalizations, she has not at this time been able to recover from the Major Depression episode.

The therapist concluded the report with the opinion that the petitioner would not be able to resume working for twelve months, and that she could benefit from a rehabilitation program.

The record also includes a medical report from the petitioner's treating psychiatrist, dated March 9, 1995, that contains the following history and comments:

Patient is a 44 year old woman with multiple hospitalizations for depression - last in November 1994 with diagnosis of Depressive Disorder, Not Otherwise Specified. Patient also seen for Insulin Dependent Diabetes and Asthma necessitating Vancril and Ventolin. Patient takes Mevacor for hypercholesterolemia. Patient currently on Prozac - 60mg gaily and being worked up for Lithium. Presently being considered having Bipolar Affective Disorder. Patient has history of Alcohol Dependence in Remission sober since 1985.

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Patient being seen for therapy and medication review but remains unstable with thoughts of suicidal ideation, hopelessness, helplessness and anhedonia.

The psychiatrist also opined that the petitioner could not be expected to return to work for twelve months and could benefit from a rehabilitation program.

Based on the above reports, which are uncontroverted, it is found that the petitioner since at least November, 1994, has been unable to return to her past work, and will be unable to do so for at least another year. There is no evidence that the petitioner will be capable of performing any other work on a regular and sustained basis within twelve months.⁽¹⁾

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Once the petitioner establishes that she cannot return to her former work, the burden of proof shifts to the Department to establish that there are alternative jobs the petitioner could perform. See Fair Hearings Nos. 11,441 and 10,529. As noted above, uncontroverted medical evidence establishes that the petitioner has been totally disabled since November, 1994, and that she will be unable to resume working (at least full time) for at least twelve more months. Thus, the petitioner's burden of proof is met, and the Department's decision is reversed.

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1. Both the therapist's and the psychiatrist's reports checked off "twelve months" to a form question asking when the petitioner might be "able to resume working at least 35 hours per week", and "yes" to a question asking whether the petitioner "might benefit from a rehabilitation program". The Department declined the opportunity to attempt to obtain further clarification from the treating sources as to whether the petitioner might be able to perform other substantial gainful activity within twelve months that involved less than full-time work.